

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

) MDL No. 1: 10 md 2197
IN RE: DePUY ORTHOPAEDICS, INC.)
ASR HIP IMPLANT PRODUCTS)
LIABILITY LITIGATION)
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**SHORT FORM COMPLAINT
FOR
DePUY ORTHOPAEDICS, INC.
ASR HIP IMPLANT PRODUCTS
LIABILITY LITIGATION**

This applies to:

Gwendolyn Gray and John Gray v. DePuy Orthopaedics, Inc. *et al.*

JURY TRIAL DEMAND

GWENDOLYN GRAY AND JOHN GRAY,

Plaintiffs,

-against-

DePUY ORTHOPAEDICS, INC., DePUY
INC., DEPUY INTERNATIONAL LIMITED,
JOHNSON & JOHNSON, JOHNSON &
JOHNSON SERVICES, INC.,
JOHNSON & JOHNSON INTERNATIONAL,

Defendants

**ABBREVIATED SHORT FORM COMPLAINT FOR DePUY ORTHOPAEDICS,
INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

1. Plaintiffs, Gwendolyn Gray and John Gray, state and bring this civil action before the Court for the United States District Court for the Northern District of Ohio as a related action in the matter entitled IN RE: DePUY ORTHOPAEDICS, INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2197. Plaintiffs are filing this short form complaint as permitted by Case Management Order No. 4 of this Court.

ALLEGATIONS AS TO VENUE

2. Venue of this case is appropriate in the Northern District Court of the State of Texas. Plaintiffs state that but for the Order permitting directly filing into the Northern District of Ohio pursuant to Case Management Order No. 4, Plaintiffs would have filed in the Northern District Court of the State of Texas. Therefore, Plaintiffs respectfully request that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

3. Plaintiff, Gwendolyn Gray, is a resident and citizen of Fort Worth, Texas, and claims damages as set forth below. Plaintiff's Spouse, John Gray, is a resident and citizen of Fort Worth, Texas, and claims damages as a result of loss of consortium.

4. Plaintiff was born on August 13, 1941.

5. Plaintiff claims damages as a result of:

injury to herself

injury to the person represented

wrongful death

survivorship action

- economic loss
 loss of services
 loss of consortium

ALLEGATIONS AS TO INJURIES

6. Plaintiff was implanted with a DePuy ASR hip implant on her right hip on or about February 4, 2010, at Harris Methodist Hospital in Fort Worth, Texas, by Dr. Theodore Crofford.

7. Plaintiff suffered the following personal and economic injuries as a result of the implantation with the ASR hip implant: Plaintiff suffers from hip pain, difficulty bending without pain and difficulty walking. Plaintiff must walk with a cane because she cannot put too much pressure on her right hip. Plaintiff has elevated metal ion levels which are being monitored by her surgeon. Plaintiff is concerned about the possibility of revision surgery and the future health effects of elevated metal ions in her blood.

8. Plaintiff has not yet scheduled an explantation of the ASR hip implant.

9. Plaintiff has suffered injuries as a result of implantation of the DePuy ASR hip implant manufactured by Defendants as shall be fully set forth in Plaintiff's Fact Sheet and other responsive documents provided to the Defendants and are incorporated by reference herein.

10. At the time of implantation with the ASR hip implant, Plaintiff resided at 4233 Freshfield Rd., Fort Worth, Texas 76119.

11. The Defendants by their actions or inactions, proximately caused Plaintiffs' injuries.

12. Plaintiff could not have known that the injuries she suffered were as a result of a defect in the ASR hip implant until after the date the device was recalled from the market and the Plaintiff came to learn of the recall.

13. Plaintiff could not have known that she was injured by excessive levels of chromium and cobalt until after the date she had her blood drawn and she was advised of the results of said blood-work.

14. As a result of the injuries Plaintiffs sustained, they are entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

ALLEGATIONS AS TO DEFENDANTS
SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

15. The following claims and allegations are asserted by Plaintiffs and are herein adopted by reference:

- FIRST CAUSE OF ACTION
(NEGLIGENCE);
- SECOND CAUSE OF ACTION
(NEGLIGENCE PER SE);
- THIRD CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-DEFECTIVE DESIGN);
- FOURTH CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-MANUFACTURING DEFECT);
- FIFTH CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-FAILURE TO WARN);
- SIXTH CAUSE OF ACTION
(BREACH OF EXPRESS WARRANTY);

- SEVENTH CAUSE OF ACTION
(BREACH OF WARRANTY AS TO MERCHANTABILITY);
- EIGHTH CAUSE OF ACTION
(BREACH OF IMPLIED WARRANTIES);
- NINTH CAUSE OF ACTION
(FRAUDULENT MISREPRESENTATION);
- TENTH CAUSE OF ACTION
(FRAUDULENT CONCEALMENT);
- ELEVENTH CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION);
- TWELFTH CAUSE OF ACTION
(FRAUD AND DECEIT);
- THIRTEENTH CAUSE OF ACTION
(UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW);
- FOURTEENTH CAUSE OF ACTION
(MISREPRESENTATION BY OMISSION);
- FIFTEENTH CAUSE OF ACTION
(CONSTRUCTIVE FRAUD);
- SIXTEENTH CAUSE OF ACTION
(NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS);
- SEVENTEENTH CAUSE OF ACTION
(INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS);
- EIGHTEENTH CAUSE OF ACTION
(GROSS NEGLIGENCE/MALICE);
- NINETEENTH CAUSE OF ACTION
(LOSS OF CONSORTIUM);
- TWENTIETH CAUSE OF ACTION
(PUNITIVE DAMAGES);
- TWENTY-FIRST CAUSE OF ACTION
(MEDICAL MONITORING);

_____ TWENTY-SECOND CAUSE OF ACTION
(VIOLATION OF APPLICABLE STATE CONSUMER FRAUD
STATUTE) – SPECIFY THE STATUTE ALLEGED _____;

✓ TWENTY-THIRD CAUSE OF ACTION
(RESTITUTION OF ALL PURCHASE COSTS AND
DISGORGEMENT OF ALL PROFITS FROM MONIES THAT
PLAINTIFF INCURRED IN PURCHASE OF THE HIP IMPLANT).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against Defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For medical monitoring, whether denominated as damages or in the form of equitable relief;
5. For an award of attorneys' fees and costs;
6. For prejudgment interest and the costs of suit; and
7. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Respectfully submitted,

Date: 8/8/12


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